

ORIGINAL
 FILED
 FEB - 8 2007
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

1 ROBERT S. AARON (SBN 138903)
 2 TIMOTHY C. WILSON (SBN 173928)
 3 AARON & WILSON, LLP
 4 150 Post Street, Suite 400
 5 San Francisco, California 94108
 Telephone: (415) 438-7800
 Facsimile: (415) 438-7808
 rsaaron@aaron-wilson.com

6 **Attorneys for Plaintiff**
 7 VERONICA AVELAR

E-filing

MJJ

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 VERONICA AVELAR,

11 Plaintiff,

12 v.

13 YOUTH AND FAMILY ENRICHMENT
14 SERVICES dba FIRST CHANCE
15 NORTH; FIRST CHANCE NORTH; and
FLOYD BURRELL,

16 Defendants.

Case No. C 07

0814

COMPLAINT FOR DAMAGES

- 1) Violation Of Federal Civil Rights (42 U.S.C. § 1983)
- 2) Violation Of Ralph Act (Civ. Code § 51.7)
- 3) Violation of Unruh Civil Rights Act (Civ. Code § 51.7)
- 4) Sexual Battery (Civ. Code § 1708.5)
- 5) Intentional Infliction of Emotional Distress
- 6) Negligent Infliction of Emotional Distress
- 7) Negligence

Demand For Trial By Jury

20 Plaintiff VERONICA AVELAR hereby complains against Defendants YOUTH
21 AND FAMILY ENRICHMENT SERVICES dba FIRST CHANCE NORTH; FIRST
22 CHANCE NORTH; and FLOYD BURRELL and alleges as follows:

PARTIES

- 24 1. Plaintiff VERONICA AVELAR ("AVELAR") is a natural person currently
residing in the County of San Mateo, State of California.
- 26 2. AVELAR is informed and believes, and thereon alleges, that at all times
relevant herein, Defendant YOUTH AND FAMILY ENRICHMENT SERVICES was a
domestic corporation organized and existing under the laws of the State of California,

1 and doing business in the County of San Mateo, State of California, under the name
2 FIRST CHANCE NORTH.

3 3. AVELAR is informed and believes, and thereon alleges, that at all times
4 relevant herein, Defendant FIRST CHANCE NORTH was an entity of a type, form and
5 domicile presently unknown.

6 4. AVELAR is informed and believes, and thereon alleges, that at all times
7 relevant herein, whether FIRST CHANCE NORTH was a separate legal entity as
8 alleged in paragraph 3 of this complaint, or a fictitious business name as alleged in
9 paragraph 2 of this complaint, it functioned as a 24-hour program that served as an
10 alternative to jail for persons arrested for driving under the influence or public
11 intoxication. Services included housing during the period of inebriation, substance
12 abuse assessment, referral services and extended case management. Hereinafter,
13 YOUTH AND FAMILY ENRICHMENT SERVICES doing business as FIRST CHANCE
14 NORTH and FIRST CHANCE NORTH as a separate legal entity will collectively be
15 referred to as "FIRST CHANCE."

16 5. AVELAR is informed and believes, and thereon alleges, that at all times
17 relevant herein, Defendant FLOYD BURRELL ("BURRELL") was a natural person
18 under the employ of FIRST CHANCE at the facility commonly known as FIRST
19 CHANCE NORTH located at 383 East Grand Avenue, Suite D, City of South San
20 Francisco, County of San Mateo, State of California. BURRELL was working the
21 graveyard shift in the early morning hours of February 12, 2005.

22 6. AVELAR is informed and believes, and thereon alleges, that at all times
23 relevant herein, each of the defendants was the owner, agent, servant, subsidiary, joint
24 venturer, consultant, associate, employee and/or partner of each of the remaining
25 defendants, and in doing or failing to do the things herein alleged, was acting within the
26 course and scope of his, her or its authority as such owner, agent, servant, subsidiary,
27 joint venturer, consultant, associate, employee and/or partner with the permission,
28 consent and approval of the other defendants.

JURISDICTION

7. AVELAR is informed and believes, and thereon alleges, that jurisdiction is proper pursuant to 28 U.S.C. section 1331 in that the case arises under the Constitution, laws, or treaties of the United States including, but not limited to 42 U.S.C. section 1983.

VENUE

8. Venue in the Northern District of California is proper in that some, if not all, of the wrongful acts alleged herein occurred within the County of San Mateo.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

9 9. On or about February 12, 2005, at approximately 3:01 a.m., AVELAR was
10 arrested by the Colma Police Department for among other offenses, a violation of
11 California Vehicle Code section 23152, subdivisions (A) and (B), more commonly
12 known as driving under the influence.

13 10. Following the arrest, the Colma Police Department transported AVELAR
14 to FIRST CHANCE NORTH at the address set forth above, where she was involuntarily
15 confined.

16 11. After the Colma Police Department officer departed from the facility,
17 AVELAR was alone with BURRELL whom she understood to be, and was in fact, in a
18 position of authority over her person and property for the duration of her confinement.
19 BURRELL was an imposing African American male approximately 6 feet in height, 200
20 pounds with a muscular build.

21 12. During the initial screening, BURRELL asked AVELAR if she had a
22 boyfriend. AVELAR responded affirmatively. Following the screening, AVELAR was
23 admitted and taken to a room that was used to house female arrestees ("the Room").
24 There was a separate room used to house male arrestees. AVELAR was the only
25 individual in the Room.

26 13. After AVELAR had been in the Room for a period of time, BURRELL
27 entered and began conversing with her. BURRELL asked AVELAR whether she had
28 ever cheated on her boyfriend. BURRELL also asked whether she had ever had sex

1 with a black man. Attempting to avoid such discussions, AVELAR responded by
 2 continually asking to be released. BURRELL next asked AVELAR if she would give
 3 him a "blow job." BURRELL then immediately pulled down his pants exposing his penis
 4 which appeared to have had fluid from ejaculation on it. In an effort to distract
 5 BURRELL, and avoid being forced to orally copulate him, AVELAR asked BURRELL
 6 about the fluid on his penis. BURRELL advised him that he was aroused and that it
 7 had been a long time since he had engaged in sexual activity with another. BURRELL
 8 then moved behind AVELAR and pulled down her pants and underwear. He then
 9 attempted, albeit unsuccessfully, to insert his penis into AVELAR'S vagina. Hoping to
 10 avoid being raped or sodomized, AVELAR then encouraged BURRELL to orally
 11 copulate her which he did. BURRELL then left the Room.

12 14. AVELAR was released early the following morning.

13 15. Subsequent to her release, BURRELL made repeated telephone calls to
 14 AVELAR. These telephone calls were made to AVELAR'S cellular and home
 15 telephones. AVELAR did not return any of these telephone calls, and by reason of
 16 BURRELL'S persistent attempts at telephonic contact, AVELAR ceased answering the
 17 telephone.

18 16. AVELAR is informed and believes, and thereon alleges, that in doing the
 19 acts described above, BURRELL was acting within the course and scope of his
 20 employment with FIRST CHANCE in that he misused his official authority over AVELAR
 21 to commit the above-described wrongful acts, thereby rendering FIRST CHANCE
 22 vicariously liable for the conduct of BURRELL under the doctrine of respondeat
 23 superior in the state law claims.

24 17. AVELAR is further informed and believes, and thereon alleges, that the
 25 conduct described above was despicable in that it amounted to malice and oppression
 26 as those terms are defined in California Civil Code section 3294, subdivisions (c)(1) and
 27 (c)(2), respectively.

28 ///

FIRST CLAIM FOR RELIEF
VIOLATION OF FEDERAL CIVIL RIGHTS (42 U.S.C. § 1983)
(Alleged Against BURRELL)

18. AVELAR re-alleges paragraphs 1 through 17, inclusive, and by this reference, fully incorporates into this claim for relief, each of the allegations contained therein.

19. AVELAR is informed and believes, and thereon alleges, that BURRELL intentionally, and/or with deliberate indifference, engaged in the conduct described above.

20. AVELAR is informed and believes, and thereon alleges, that BURRELL was acting and/or purporting to act in the performance of his official duties under color of state law.

21. AVELAR is informed and believes, and thereon alleges, that BURRELL'S conduct violated, among other rights, her constitutional right under the Eighth Amendment to the United States Constitution to be free from sexual abuse while in custody.

22. As a direct and proximate result of the sexual abuse to which AVELAR was subjected by BURRELL, AVELAR suffered severe emotional distress including, but not limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation and shame, in an amount according to proof at trial.

WHEREFORE, AVELAR prays judgment against Defendant BURRELL as hereafter set forth.

SECOND CLAIM FOR RELIEF
VIOLATION OF RALPH ACT (Civ. Code § 51.7)
(Alleged Against All Defendants)

23. AVELAR re-alleges paragraphs 1 through 17, inclusive, and by this reference, fully incorporates into this claim for relief, each of the allegations contained therein.

24. BURRELL threatened to, and in fact committed violent acts against AVELAR as described above.

1 25. AVELAR is informed and believes, and thereon alleges, that a motivating
2 reason for BURRELL'S conduct was AVELAR'S sex and/or race.

3 26. As a direct and proximate result of the Ralph Act violation to which
4 AVELAR was subjected by BURRELL, AVELAR suffered severe emotional distress
5 including, but not limited to, suffering, anguish, fright, horror, nervousness, grief,
6 anxiety, worry, shock, humiliation and shame, in an amount according to proof at trial.

7 WHEREFORE, AVELAR prays judgment against defendants, and each of them,
8 as hereafter set forth.

THIRD CLAIM FOR RELIEF
VIOLATION OF UNRUH CIVIL RIGHTS ACT (Civ. Code §§ 51, 52)
(Alleged Against All Defendants)

11 27. AVELAR re-alleges paragraphs 1 through 17, inclusive, and by this
12 reference, fully incorporates into this claim for relief, each of the allegations contained
13 therein.

14 28. BURRELL denied, discriminated and/or made a distinction that denied full
15 and equal accommodations, advantages, facilities, privileges and/or services to
16 AVELAR.

17 29. AVELAR is informed and believes, and thereon alleges, that a motivating
18 reason for BURRELL'S conduct was AVELAR'S sex and/or race.

19 30. As a direct and proximate result of the Unruh Civil Rights Act violation to
20 which AVELAR was subjected by BURRELL, AVELAR suffered severe emotional
21 distress including, but not limited to, suffering, anguish, fright, horror, nervousness,
22 grief, anxiety, worry, shock, humiliation and shame, in an amount according to proof at
23 trial.

WHEREFORE, AVELAR prays judgment against defendants, and each of them,
as hereafter set forth.

26 | //

27 | //

28 //

**FOURTH CLAIM FOR RELIEF
SEXUAL BATTERY (Civ. Code § 1708.5)
(Alleged Against All Defendants)**

31. AVELAR re-alleges paragraphs 1 through 17, inclusive, and by this reference, fully incorporates into this claim for relief, each of the allegations contained therein.

32. AVELAR is informed and believes, and thereon alleges, that in doing the acts described above, BURRELL acted with the intent to cause a harmful or offensive contact with an intimate part of AVELAR'S body, and as a result of these actions, a sexually offensive contact occurred.

33. AVELAR is informed and believes, and thereon alleges, that in doing the acts described above, BURRELL acted with the intent to cause a harmful or offensive contact with AVELAR'S body by use of an intimate part of his body, and as a result of these actions, a sexually offensive contact occurred.

34. AVELAR is informed and believes, and thereon alleges, that in doing the acts described above, BURRELL acted with the intent to cause an imminent apprehension of: a) a harmful or offensive contact with an intimate part of AVELAR'S body; or b) a harmful or offensive contact with AVELAR'S body by use of an intimate part of his body, and as a result of these actions, a sexually offensive contact occurred.

35. As a direct and proximate result of the sexual battery to which AVELAR was subjected by BURRELL, AVELAR suffered severe emotional distress including, but not limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation and shame, in an amount according to proof at trial.

WHEREFORE, AVELAR prays judgment against defendants, and each of them, as hereafter set forth.

111

11

FIFTH CLAIM FOR RELIEF
INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS
(Alleged Against All Defendants)

36. AVELAR re-alleges paragraphs 1 through 17, inclusive, and by this reference, fully incorporates into this claim for relief, each of the allegations contained therein.

37. BURRELL'S conduct, as described above, was outrageous.

38. AVELAR is informed and believes, and thereon alleges, that in doing the acts described above, BURRELL intended to cause and/or acted with reckless disregard of the probability of causing AVELAR to suffer emotional distress.

39. As a direct and proximate result of BURRELL'S wrongful conduct as described above, AVELAR suffered severe emotional distress including, but not limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation and shame, in an amount according to proof at trial.

WHEREFORE, AVELAR prays judgment against defendants, and each of them, as hereafter set forth.

SIXTH CLAIM FOR RELIEF
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS
(Alleged Against All Defendants)

40. AVELAR re-alleges paragraphs 1 through 17, inclusive, and by this reference, fully incorporates into this claim for relief, each of the allegations contained therein.

41. AVELAR is informed and believes, and thereon alleges, that BURRELL'S conduct, as described above, was negligent.

42. As a direct and proximate result of BURRELL'S wrongful conduct as described above, AVELAR suffered severe emotional distress including, but not limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation and shame, in an amount according to proof at trial.

WHEREFORE, AVELAR prays judgment against defendants, and each of them, as hereafter set forth.

1 **SEVENTH CLAIM FOR RELIEF**
 2 **NEGLIGENCE**
 3 **(Alleged Against All Defendants)**

4 43. AVELAR re-alleges paragraphs 1 through 17, inclusive, and by this
 5 reference, fully incorporates into this claim for relief, each of the allegations contained
 6 therein.

7 44. AVELAR is informed and believes, and thereon alleges, that BURRELL'S
 8 conduct, as described above, was negligent.

9 45. AVELAR is further informed and believes, and thereon alleges, that
 10 FIRST CHANCE was negligent in its hiring, screening, training, monitoring, supervising,
 11 disciplining, and/or otherwise managing BURRELL.

12 46. As a direct and proximate result of the negligence of defendants, and
 13 each of them, AVELAR suffered severe emotional distress including, but not limited to,
 14 suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation
 15 and shame, in an amount according to proof at trial.

16 WHEREFORE, AVELAR prays judgment against defendants, and each of them,
 17 as hereafter set forth.

REQUEST FOR TRIAL BY JURY

18 47. AVELAR hereby requests a trial by jury on all issues triable by jury.

PRAYER FOR RELIEF

19 WHEREFORE, AVELAR prays for judgment against defendants, and each of
 20 them, as follows:

21 1. For past and future compensatory damages in amount according to proof
 22 at trial;

23 2. For statutory penalties including, but not necessarily limited to, those
 24 provided in California Civil Code section 52, subdivisions (a) and (b) in an amount
 25 according to proof at trial;

26 3. For reasonable attorney's fees as allowed by law in an amount according
 27 to proof at trial;

1 4. For punitive and exemplary damages as allowed by law in an amount
2 according to proof at trial;

3 5. For interest and cost of suit as allowed by law in an amount according to
4 proof at trial; and

5 6. For such other and further relief as the court may deem just and proper.

6 Dated: February 8, 2007

AARON & WILSON, LLP

7 By _____
8

9 ROBERT S. AARON
10 Attorneys for Plaintiff
11 VERONICA AVELAR

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28